TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1903~~ 1905.

No. ~~304~~ 53.

ARMOUR PACKING COMPANY, PLAINTIFF IN ERROR,

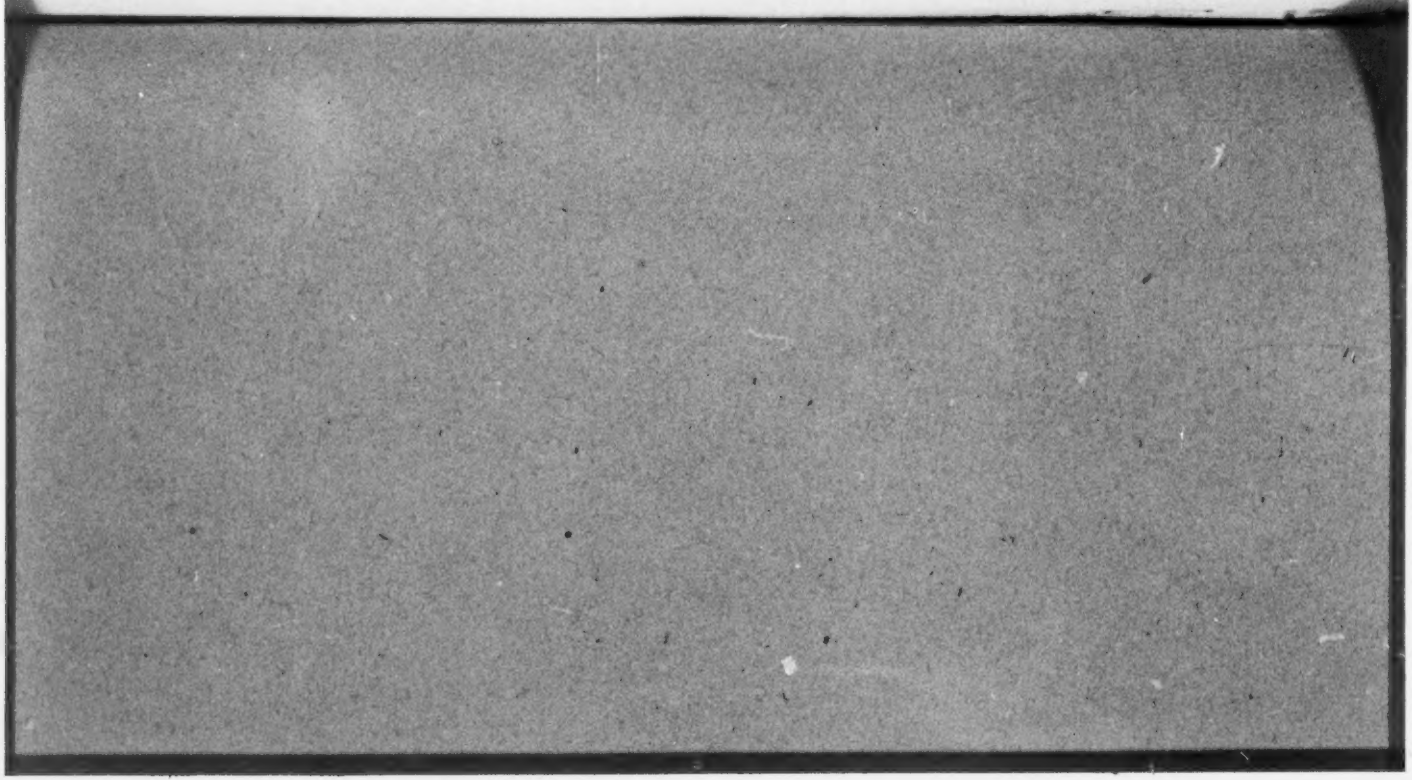
vs.

B. R. LACY, TREASURER OF THE STATE OF NORTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

FILED JUNE 25, 1904.

(19,404.)



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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 11, 1904.

1 The Supreme Court of the State of North Carolina.

B. R. LACY, State Treasurer,
vs.
ARMOUR PACKING COMPANY.

To the Honorable Walter Clark, chief justice of the supreme court of the State of North Carolina:

Comes now The Armour Packing Company, the above named defendant and appellant, by its attorneys T. B. Felder and Pou & Fuller, and complains and alleges:

That it is a corporation organized and existing under the laws of the State of New Jersey; that in the above entitled matter on the 5th day of April, 1904, final judgment was rendered against your petitioner by the supreme court of the State of North Carolina, that being the highest court of law and equity in said State of North Carolina, wherein it was adjudged that the provisions of section 56, chapter 247, page 339 of the Laws of North Carolina of 1903, which imposed a license tax upon every meat packing house doing business in said State of $100.00 for each county in which said business is carried on, are not in conflict with the provisions of section 1 of the fourteenth amendment to the Federal Constitution in that the provisions of said act did not deprive this appellant, a citizen of the United States and of the State of New Jersey, of rights, privileges and immunities secured to other citizens of the United States and of said State, nor of liberty or property without due process of law, nor the equal protection of the law.

It was also adjudged by said supreme court by its said final judgment in the above entitled matter, that the provisions of said act are not in violation of the provisions of section 3 of article 1 of the Federal Constitution giving to Congress the exclusive rights to regulate commerce among the several States, and that the provisions of said act are not in violation of the provisions of the Federal Constitution which prohibit arbitrary or class legislation.

All of which appears in the record, opinion and final judgment of said supreme court, adjudging that the said license tax was
2 a legal exaction from this appellant and requiring it to pay the same, whereby manifest error has happened to the very great damage of your petitioner, who has filed with this petition its assignments of error.

Wherefore, your petitioner presents herewith an exemplified transcript of the record of the supreme court of North Carolina in said case, and prays that a writ of error to said supreme court be allowed; that citation be granted and signed; that the bond herewith presented be approved, and that upon compliance with the terms of the statute in such cases made and provided said bond and writ of error

may operate — a supersedeas that the errors complained of may be reviewed in the Supreme Court of the United States, and the judgment aforesaid of the supreme court of the State of North Carolina be reversed.

ARMOUR PACKING CO.,
By FELDER & ROUNTREE &
POU & FULLER, *Attorneys.*

3 The writ of error as prayed for in the foregoing petition is hereby allowed, this 7 day of June, A. D., 1904, the writ of error to operate as a supersedeas, and the bond for that purpose is fixed at the sum of two thousand dollars.

Dated at Raleigh, North Carolina, this 7 day of June, A. D. 1904.

WALTER CLARK,
Chief Justice Supreme Court of the State of North Carolina.

4 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the supreme court of the State of North Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said supreme court of the State of North Carolina, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between B. R. Lacy, State treasurer, and Armour Packing Company, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such, their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Armour Packing Company, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 14th day of July, 1904, in the said Supreme Court, to

be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

[Seal United States Circuit Court, Eastern Dist. of N. C.]

W. D. GRANT,
Clerk U. S. Circuit Court.

5 The Supreme Court of the State of North Carolina.

B. R. LACY, State Treasurer,
vs.
ARMOUR PACKING COMPANY.

Assignment of Errors.

Now comes The Armour Packing Company, the defendant in the above entitled cause, and in connection with its petition for writ of error herein, makes the following assignments of error.

First.

That the court erred in holding and adjudging that the provisions of section 56, chapter 247, page 339 of the Laws of North Carolina of 1903, which imposed a license tax upon every meat packing house doing business in said State of $100.00 in each county in which said business is carried on, was applicable under the agreed statement of facts to it, the plaintiff in error.

Second.

That the court erred in holding and adjudging that the provisions of said section 56, chapter 247, page 339 of the Laws of North Carolina of 1903, which imposed a license tax upon meat packing houses doing business in said State of $100.00 for each county in which said business is carried on, was not in conflict with the provisions of section 1 of the fourteenth amendment to the Federal Constitution, in that the provisions of said act did not deprive it, the said plaintiff in error, a citizen of the United States and of the State of New Jersey, of rights, privileges and immunities secured to other citizens of the United States and of said State, nor of its liberty or property without due process of law, nor the equal protection of the law. It insists that the said law should have been declared unconstitutional and void for that the State of North Carolina by and through the provisions of said act seeks, (*a*), to deprive plaintiff in error of its property under an arbitrary and unlawful classification without due process of law; (*b*), to abridge its privileges and immunities
6 as a citizen of the United States; and, (*c*), to deny to it the equal protection of the law.

Third.

That the court erred in holding that the provisions of section 56, chapter 247, page 339 of the Laws of North Carolina of 1903, are not in conflict with the provisions of section 3 of article 1 of the Federal Constitution giving to Congress the exclusive right to regulate commerce among the several States. It insists that said act is an illegal interference with, and regulation of, inter-state commerce.

Fourth.

That the court erred in holding that the provisions of said act, section 56, chapter 247, page 339 of the Laws of North Carolina of 1903, are not in conflict with the provisions of the Federal Constitution which prohibit arbitrary and class legislation.

Fifth.

That the court erred in affirming the judgment of the superior court of Buncombe count,y, North Carolina, and in not reversing said judgment and holding that said exaction of said license was illegal and void, and in not remanding the case for further proceedings.

7 UNITED STATES OF AMERICA, ss:

To B. R. Lacy, treasurer of the State of North Carolina, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington, D. C., on the 14th day of July, next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of North Carolina, wherein The Armour Packing Company is plaintiff and B. R. Lacy, treasurer of the State of North Carolina, is the defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be rendered to the parties in that behalf.

Witness the Honorable Walter Clark, the chief justice of the supreme court of North Carolina, this 14 day of June, A. D. 1904.

WALTER CLARK,
Chief Justice.

Service of the above citation and receipt of a copy thereof admitted. This 16 day of June, 1904.

B. R. LACY,
State Treasurer.

8 *Bond.*

Know all men by these presents, that we, Armour Packing Company, as principal, and H. E. Litchford, as surety, are held and firmly bound unto B. R. Lacy, State treasurer, in the sum of two thousand dollars ($2000) to be paid said obligee, his successor, representatives and assigns, to the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this the 14th. day of June A. D. 1904.

Whereas the above named plaintiff in error hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the supreme court of the State of North Carolina: Now therefore the condition of this obligation is such that if the above named plaintiff in error shall prosecute his writ of error to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

ARMOUR PACKING COMPANY,
By FELDER & ROUNTREE AND
POU & FULLER, *Att'ys.*
H. E. LITCHFORD. [SEAL.]

STATE OF NORTH CAROLINA, }
City of Raleigh, County of Wake. }

H. E. Litchford being duly sworn says that he is a freeholder and resident of the city of Raleigh and county of Wake aforesaid, and that he is worth the sum of four thousand ($4000) dollars over and above all his just debts and liabilities, and in excess of his homestead and personal property exemptions allowed by law.

H. E. LITCHFORD.

Sworn to and subscribed before me this 14th. day of June, 1904.

FRANK P. HAYWOOD,
[L. S.] *Notary Public.*

The above bond is adjudged sufficient and is approved.
14 June, 1904.

WALTER CLARK,
Chief Justice.

9 *Controversy Without Action.*

STATE OF NORTH CAROLINA, }
County of Buncombe. }

In the Superior Court of Buncombe County.

B. R. LACY, State Treasurer of North Carolina, }
against }
ARMOUR PACKING COMPANY. }

1.

There is a question of difference between the parties to the above-entitled cause, which might be made the subject of a civil action. Both the plaintiff and defendant hereby agree, without action, to the subjoined facts, upon which the controversy depends. The facts hereinafter recited are agreed to by the parties plaintiff and defendant, and are submitted to this court, the same having jurisdiction of any action that might be brought, to the end that the judge shall hear and determine this action and render judgment thereon as if the action were pending.

2.

At the session of the legislature of North Carolina, 1903, an act was passed taxing every meat packing-house doing business in this State, $100.00 for each county in which said business is carried on. Said act is as follows:

"SECTION 56. Packing Houses.—Upon every meat packing-house doing business in State, $100.00 for each county in which said business is carried on."

The same session of the same legislature passed the following act:

"SECTION 88. Unless prohibited, county may levy same license tax as State. In case where a specific tax is levied for the privilege of carrying on any business, trade or occupation, the county may levy the same tax and no more: Provided, no provision to the contrary is made in the section levying the specific license tax."

3.

Under and by virtue of the statutes of North Carolina, the $100.00 levied as State tax is payable to the State treasurer, and it is made his duty, upon failure to pay said tax to him after the same shall become due, to institute an action to enforce the same in the county of Wake, or in the county in which the property taxed is located.

(See Machinery Act of 1903, section 107, page 87.)

4.

The Armour Packing Company (hereinafter called defendant) has property which, if subject to this tax, is situated in the county of Buncombe, city of Asheville, State aforesaid.

10

5.

Armour Packing Company is a corporation duly incorporated under the laws of the State of New Jersey, and has its principal office and place of business in Kansas City, State of Kansas.

6.

The business in which it is engaged in Kansas City, State of Kansas, is a meat packing house business.

7.

A meat packing house is a place where the business of slaughtering animals and dressing and preparing the products of their carcasses for food and other purposes is carried on. The products thus prepared consist of fresh and cured meats, such as hams, dry salt sides, bacon, lard, beef extracts, glue, blood, tankage, etc.

8.

Said Armour Packing Company does not anywhere within the State of North Carolina slaughter, dress, cure, pack or manufacture any products hereinbefore set forth, of any animal, for food, or for commercial use, or for other purposes.

9.

After the animals are slaughtered, dressed and prepared for food and other commercial purposes in the packing house of the said Armour Packing Company in Kansas City, Kansas, some of said products are shipped in bulk to the following points in North Carolina, where the said Armour Packing Company has cold storage plants and warehouses, to wit, Wilmington, Greensboro, Asheville, Charlotte, and Fayetteville, and some of said products are from said cold storage plants sold. Other products of said packing houses are shipped into the said State on orders from brokers, commission men, etc., said brokers and commission men taking orders in behalf of their customers and forwarding the same direct.

10.

The products that are shipped in bulk to the points in North Carolina set forth in paragraph nine are from said points sold and distributed. Some of the products which are shipped to Wilmington are sold and distributed in the State of North Carolina, and some of the products shipped to Wilmington are re-shipped, sold and distributed in the State of South Carolina. The method of doing business at said point is as follows: The said products are shipped in bulk to Wilmington, to the warehouse or cold storage plant of defendant; they are there sold on orders to the customers of the defendant in that territory, and are re-shipped to customers of the defendant in the State of South Carolina.

11.

Some of the products which are shipped to Greensboro are sold and distributed in the State of North Carolina, and some of the products shipped to Greensboro are sold and distributed in the State of Virginia. The method of doing business at said point is as follows: The said products are shipped in bulk to Greensboro, to the warehouse or cold storage plant of defendant. They are there sold on orders to the customers of defendant in that territory and are reshipped to customers of defendant in the State of Virginia.

11 12.

Some of the products which are shipped to Asheville are sold and distributed in the State of North Carolina, and some of the products shipped to Asheville are sold and distributed in the State of South Carolina. The method of doing business at said point is as follows: The products are shipped in bulk to Asheville, to the warehouse or cold storage plant of defendant. They are there sold on orders to the customers of defendant in that territory, and are reshipped to customers of the defendant in the State of South Carolina.

In some cases said packing-house products are sold at or before the day of their shipment, and when received in Asheville are delivered to the purchasers of said products, and in all cases title to the same remains in the Armour Packing Company until sold to their customers. The rest of said products shipped to Asheville and stored in said warehouse or cold storage plants and remain there until disposed of in due course of trade on orders taken and received after said products have been sold or placed in said warehouse or cold storage plants.

13.

All of the products aforesaid are shipped into the State of North Carolina for the mere purpose of sale, and not for the purpose of re-investment of the proceeds arising therefrom. Said proceeds are remitted to the head office at Kansas City as collected.

14.

At said several points in the State of North Carolina, defendant sells by wholesale fresh, cured and salt meats, and the products that have been manufactured from the carcasses of slaughtered animals, and in said State, counties and cities it conducts no other kind of business.

15.

At each of said places in North Carolina, defendant has one or more employees, that is, bookkeepers, stenographers, shipping clerks, salesmen, drivers, laborers who box said meats and who wrap and crate goods for delivery as they are sold.

16.

There are in said cities of Wilmington and other cities of said State commission merchants, brokers and butchers, who sell by wholesale and retail, in competition with Armour Packing Company (and who are not engaged in a meat packing house business in North Carolina or elsewhere), fresh cured and salt meats and other products that have been manufactured from the carcasses of slaughtered animals for food and commercial purposes; and under the laws of said State of North Carolina said commission merchants, brokers and butchers are not amenable to the tax levied under section 56 of the revenue act of the legislature of 1903.

17.

In the State of North Carolina, at all points where the Armour Packing Company is engaged in business, and at various other places in said State, there are engaged in business as the Armour Packing Company is engaged, packing houses which pack articles of food other than meat, and offer them for sale in said State, such as peas, beans, tomatoes, corn, pumpkins, fruits, fish, oysters, etc.

The products of said packing houses are articles of food and commerce, and are sold in the State of North Carolina through agents, brokers, wholesale and retail merchants, just as the products packed by the Armour Packing Company are sold.

12 Wherefore, the premises considered, the judgment of the court is invoked upon the following points, to-wit:

(*a.*) As the defendant is not engaged in doing a packing house business in the State of North Carolina, is it subject to the tax of $100.00 for each county above named, and which is sought to be collected?

(*b.*) If it should be held that the Armour Packing Company is engaged in doing a packing house business under the agreed state of facts in North Carolina, does not said act contravene article V, section 3, of the constitution of the State of North Carolina, which provides:

"Laws shall be passed for taxing by uniform rules"?

(*c.*) Is not this act repugnant to the fourteenth amendment to the Constitution of the United States, which provides that:

"No State shall make or enforce any law which shall abridge the privileges or immunities of any citizen of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any one within *the* jurisdiction the equal protection of the law"?

(*d.*) Is not said act violative of the statutes of the United States which regulate interstate commerce?

(*e.*) Is not the act singling out "meat packing houses" for taxation arbitrary or class legislation, and is it not prohibited by the

constitution and laws of the State of North Carolina and of the United States?

The above is respectfully submitted.

FELDER & ROUNTREE,
Attorneys Armour Packing Co.

Agreement.

STATE OF NORTH CAROLINA, }
—— *County.* }

The Honorable R. D. Gilmer, attorney-general of North Carolina, who represents B. R. Lacy, the State treasurer, in the above-entitled cause, and Felder & Rountree and Thomas Settle, attorneys for the Armour Packing Company in the above-entitled cause, hereby agree that the above and foregoing contains a true statement of the facts upon which the controversy between the said B. R. Lacy, treasurer of the State of North Carolina, and the said Armour Packing Company depends.

This 3d day of August, 1903.

R. D. GILMER,
Counsel for B. R. Lacy, State Treasurer.
FELDER & ROUNTREE,
THOMAS SETTLE,
Attorneys for Defendant.

STATE OF GEORGIA, }
County of Fulton. }

Personally appeared before me, the undersigned, an officer authorized by law to administer oaths, W. F. Smith, Jr., who, on oath, says that he is the agent of the Armour Packing Company for the State of North Carolina. Deponent further says that the controversy depending between B. R. Lacy, State treasurer, and the Armour Packing Company, contained in the foregoing statement of facts, is real, and that the proceedings herein are instituted in good faith and for the purpose of determining the rights under the law of said parties, B. R. Lacy, treasurer of the State of North Carolina, and the Armour Packing Company.

W. F. SMITH, JR.

13 Sworn to and subscribed before me, this 3d day of May, 1903.

[SEAL.]

S. N. TEITLEBAUN,
N. P., Fulton County, Ga.

Judgment.

NORTH CAROLINA,
Buncombe County.

In Superior Court of Buncombe County.

Controversy without action.

B. R. LACY, State Treasurer of North Carolina,
against
ARMOUR PACKING COMPANY.

This cause coming on to be heard, and being heard upon an agreed statement of facts hereto attached. Upon hearing the argument of counsel, and after due consideration of same, it is adjudged by the court that the defendant is doing a meat packing house business in Buncombe county, North Carolina. That the acts of the legislature of North Carolina, 1903, imposing the tax referred to, does not contravene article V, section 3, of the constitution of North Carolina. That said act is not repugnant to the fourteenth amendment to the Constitution of the United States. That said act is not (in) violation of the statutes of the United States regulating interstate commerce. That said act, in taxing meat packing houses such as defendant operates in Buncombe county, North Carolina, is not arbitrary or class legislation.

And it is further considered and adjudged by the court that the defendant, Armour Packing Company, is liable for and due the plaintiff the tax as claimed, together with the costs of action, to be taxed by the clerk of this court.

E. B. JONES,
Judge Holding Court in the Fifteenth Judicial District.

From this judgment the defendant appeals to the Supreme Court.

Notice of appeal waived. Appeal bond in the sum of $25.00 adjudged sufficient.

E. B. JONES,
Judge Holding Court in the Fifteenth Judicial District.

Undertaking on Appeal for Costs.

BUNCOMBE COUNTY:

In the Superior Court.

B. R. LACY, State Treasurer of North Carolina, Plaintiff,
against
ARMOUR PACKING COMPANY, Defendant.

This 16th day of September, 1903.

Whereas on the 15th day of August, 1903, in a controversy without action, judgment was rendered against the defendant above.

And whereas, the appellant intends to appeal from said judgment to the Supreme Court:

Now, therefore, we, Armour Packing Company, undertake, pursuant to the statute, that the said appellant shall pay all costs and damages that may be awarded against it on such appeal, not exceeding twenty-five ($25.00) dollars.

ARMOUR PACKING CO.,
Per F. A. TODD,
Manager Asheville Branch.
F. A. TODD.

Witness:
M. ERWIN.

14 *Justification of Sureties.*

BUNCOMBE COUNTY, *sct:*

(F. A. Todd), above named, being severally duly sworn, say, each for himself, that he is a resident of the State of North Carolina, and worth double the sum specified in the above undertaking, over all his debts and liabilities, and exclusive of property exempt from execution.

F. A. TODD.

Sworn and subscribed before me, this 16th day of September, 1903.

M. ERWIN,
Clerk Superior Court.

Clerk's Certificate.

NORTH CAROLINA,
Buncombe County.

In the Superior Court.

B. R. LACY, State Treasurer of North Carolina,
against
ARMOUR PACKING COMPANY.

I, Marcus Erwin, clerk superior court Buncombe county, North Carolina, do hereby certify that the foregoing is a true, perfect and complete transcript of the record in the above-entitled cause, as the same appears on file in this office.

Witness my hand and the seal of the superior court hereto attached, this the 16th day of September, 1903.

MARCUS ERWIN,
[SEAL.] *Clerk Superior Court, Buncombe County, N. C.*

(Docket entries: Appeal docketed Sept. 19, 1903; argued Nov. 10; opinion handed down April 5, 1904.)

15 Supreme Court of N. C., Feb. Term, 1904.

B. R. LACY, State Treasurer,
v.
ARMOUR PACKING CO., Appellant. } #505, Buncombe.

T. B. Felder and Pou & Fuller for appellant.
Attorney general for the appellee.

CLARK, *C. J.:*

This action calls in question the constitutionality of section 56, chapter 247, Laws 1903, which chapter provides in Schedule B as one of the license taxes "for carrying on business" (section 26) the following:—"Section 56, packing houses. Upon every meat packing house doing business in this State one hundred dollars for each county in which said business is carried on." From the facts agreed it appears that the defendant was incorporated in New Jersey, but has its principal office and place of business in Kansas; that it has property in this State; that a meat packing house is a place where the business of slaughtering animals and dressing and preparing the products of their carcasses for food and other purposes is carried on, the products thus prepared consist of fresh and

cured meats, such as hams, dry salt sides, bacon, lard, beef extracts, glue, blood, tankage etc.; that the defendant does not slaughter, dress or manufacture its products in this State, but after the animals are slaughtered, dressed and prepared for food or other commercial purposes by the defendant in Kansas, such product is shipped in bulk to five points in this State (Wilmington, Greensboro, Asheville, Charlotte and Fayetteville) where the defendant has cold storage plants and warehouses, and sold from such storage plants, some of such product to parties in this State and some to parties outside of this State; that part of said products shipped to the defendant's cold storage warehouse in Asheville (whence this appeal comes) remain there until disposed of in due course of trade on orders taken and received after said products have been stored or placed in said warehouse or cold storage plants. At such of said five points in this State where the defendant maintains a warehouse and cold storage plants, it has one or more employees, *i. e.*, book keepers, stenographers, shipping clerks, salesmen, drivers, laborers who box said meats and who wrap and crate goods for delivery as they are sold. There are in said cities of Wilmington and other cities of said State, commission merchants, brokers and butchers who sell by wholesale and retail in competition with the
16 Armour Packing Co. (and who are not engaged in a meat packing house business in North Carolina or elsewhere) fresh, cured and salt meats and other products that have been manufactured from the carcasses of slaughtered animals for food and commercial purposes, and under the laws of North Carolina said commission merchant-, brokers and butchers are not amenable to the tax levied under section 56 of said revenue act of 1903. At all points in North Carolina where the Armour Packing Company is engaged in business, and at various other places in said State, there are engaged in business, as the Armour Packing Company is engaged, packing houses which pack articles of food other than meat and offer them for sale in said State, such as peas, beans, tomatoes, corn, pumpkins, fruits, fish, oysters etc. The products of said packing houses are articles of food and commerce and are sold in the State of North Carolina through agents, brokers, wholesale and retail merchants, just as the products packed by the Armour Packing Company are sold.

This is a statement of all the material facts agreed, as stated in the "action submitted without controversy." Upon these facts the defendant contends (1) that it is not engaged in doing a packing house business in this State. This may be true, but upon the facts agreed the packing house is "doing business" here, and the license tax is laid upon whatever business it is doing; (2) that the tax is an interference with inter-state commerce; (3) that the tax contravenes section 3 article V of the constitution of North Carolina which requires taxation "by uniform rules;" (4) that the tax is forbidden by the fourteenth amendment to the Constitution of the United States; (5) that singling out "meat packing houses" for taxation is

arbitrary or class legislation, and prohibited by both State and Federal Constitutions. These contentions were held adversely to the defendant who was adjudged to pay the tax, and appealed.

If the business of the defendant was solely that of shipping food products into this State, consigned directly to purchasers on orders previously obtained, it is clear that this would be inter-state commerce and a tax laid by the State upon such business would
17 be illegal. But the defendant does a large business within the State, the selling of products already stored here on orders received after these products are thus stored. The tax is laid upon every meat packing house "doing business in this State." The evident meaning of the legislature is to tax the agency "doing business within this State" and not to lay any tax upon the inter-state commerce of shipping products into the State to be directly or indirectly delivered to purchasers whose orders were obtained before the goods were shipped.

In Express Co. *v.* Seibert, 142 U. S. at page 350, it is said that a tax "on business within the State cannot be made to mean business done between that State and other States." The appellant contends that a packing house cannot be considered as doing business in this State unless it actually engages, at some point in this State, in the business of maintaining a place where the slaughtering of animals and the dressing and preparing of the products of their carcasses for food and other commercial purposes is carried on. The record shows that the appellant ships its food products into this State in carload lots, and deposits them in warehouses or cold storage plants where they remain until disposed of in due course of business on orders taken after the goods have thus become intermingled with property in this State. The company also maintains at various points in North Carolina, in addition to its warehouses and cold storage plants, offices and salesplaces and agencies where it has in its employment book keepers, stenographers shipping clerks, salesmen, drivers, laborers who box said meat and who wrap and crate goods for delivery as they are sold." No question is here raised or passed upon as to the right to tax the sale of goods shipped here and resold in the original packages. The appellant is certainly "doing business" in this State and it can only do this as a matter of comity, for the legislature has the power to exclude foreign corporations altogether or to prescribe such conditions as it sees fit. 3 Clark & Marshall Private Corporations sec. 844 p. 2695 and cases cited; 2 Cook Corp. sec. 696-700; Range Co. *v.* Carver at p. 335; Ins. Co. *v.* Edwards, 124 N. C. at p. 121; Commissioners *v.* Tobacco Co., 116 N. C. 441. This license tax is the condition upon which the defendant is permitted to do this *intra*-state business, above recited.

That this tax is not an interference with inter-state
18 commerce, we have a case exactly in point, Osborne *v.* Florida, 164 U. S. 650 (filed January 1897) in which it is held that "the license tax imposed upon express companies *doing business* in Florida, as construed by the supreme court of that State, applies solely to

business of the company within the State, and does not apply to or affect its business which is inter-state in its character, and, being thus construed, the statute does not in any manner violate the Federal Constitution. The construction of the State statute by its highest court is not open to review." The present case is stronger against the defendant, for, unlike the appellant in Osborne *v.* Florida, this defendant is not a common carrier. See citations of Osborne *v.* Florida, 12 Rose's Notes, 917.

The defendant *doing business* in this State and the license tax being exacted only by virtue of its *intra*-state business, the first two grounds of objection are overruled. Nor is the third exception any stronger, which is that the tax violates section 3 article V of the State constitution which requires that "laws shall be passed for taxing by a uniform rule." That section has often been passed upon and it is settled that "*A tax is uniform when it is equal upon all persons belonging to the described class upon which it is imposed.*" It has been held that the tax may be different upon a dealer in whiskey by retail and a dealer in the same article by wholesale, if uniform as to each class. Gatlin *v.* Tarboro, 78 N. C. at p. 122; on tobacco buyers as a specific class, State *v.* Irvin, 126 N. C. 989; on hotel keepers as a class, graduated in amount by the gross receipts and exempting those whose yearly receipts are less than $1000, Cobb *v.* Commissioners, 122 N. C. 307; on the total amount of purchases by a merchant in or out of the city, except purchases of farm products from the producer, State *v.* French, 109 N. C. 722; in cities and towns, according to population, State *v.* Green, 126 N. C. 1032; State *v.* Carter, 129 N. C. 560. In State *v.* Stevenson, 109 N. C. at page 734, it is said: "It is within the legislative power to define the different classes and to fix the license tax required of each class. All the licensee can demand is that he shall not be taxed at a dif-
19 , ferent rate from others in the same occupation as classified by legislative enactment." This is stated as a universal rule, 1 Cooley Taxation (3 ed.) p. 260.

The fourth exception is that the act violates the fourteenth amendment (which in these latter days it is diligently sought to construe into a *quo minus* and *ac etiam* device by which every question may be drawn within the jurisdiction of the Federal courts.) It has been repeatedly decided by the Supreme Court of the United States that this section of the constitution does not forbid the classification of property or persons for the purposes of taxation, but merely compels the equal application of the law to all members of the same class, when the classification is based upon reasonable ground, and not an arbitrary selection. Railroad *v.* Ellis, 165 U. S. 165; Tel Co. *v.* Indiana, *ibid.*, 304; Railroad *v.* Iowa, 94 U. S. 164; Dowe *v.* Biedleman, 125 U. S. 680; Ins. Co. New York 134 U. S. 606; Railroad tax cases, 115 U. S. 321. Com. *v.* Clark, 195 Pa. St. at page 638 held as has been held by this court, that a separate classification of wholesale dealers from that of retail dealers is not an illegal and arbitrary

classification. Cable Co. *v.* State 46 N J. Eq. 270; State *v.* Applegarth, 81 Md. 293 (imposing a license tax on oyster packers).

The fifth exception cannot be sustained. The legislature is sole judge of what subjects it shall select for taxation (other than a property tax, which must be uniform and advalorem) and the exercise of its discretion is not subject to the approval of the judicial department of the State. A very full discussion of the whole matter, concluding as above, will be found in State *v.* Packing Co., 110 La. —; 34 So. Rep. 368.

No error.

20 (Title of Cause.)

Judgment.

This cause came on to be argued upon the transcript of the record from the superior court of Buncombe county:—upon consideration whereof, this court is of opinion that there is no error in the record and proceedings of said superior court.

It is therefore considered and adjudged by the court here, that the opinion of the court, as delivered by the Honorable Walter Clark chief justice, be certified to the said superior court, to the intent that the judgment be affirmed. And it is considered and adjudged further, that the defendant and surety do pay the costs of the appeal in this court incurred, to-wit, the sum of twenty 90/100 dollars ($20.90), and execution issue therefor.

21 *Certificate.*

I, Thos. S. Kenan, clerk of the supreme court of North Carolina, do hereby certify the foregoing to be, a full, true and correct copy of the record in the above entitled cause as appears from the original on file in this court.

Given under my hand and seal of said court at office in Raleigh on this the 18th. day of June, 1904.

[Seal of the Supreme Court of the State of North Carolina.]

THOS. S. KENAN,
Clerk Supreme Court of North Carolina.

Endorsed on cover: File No. 19,404. North Carolina supreme court. Term No. 304. Armour Packing Company, plaintiff in error, *vs.* B. R. Lacy, treasurer of the State of North Carolina. Filed June 25", 1904. File No. 19,404.

FILE COPY.

No. 53.

Supreme Court of the United States

OCTOBER TERM, 1904.

[redacted]

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FILED
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JAMES H. McKENNEY,
Cl

ARMOUR PACKING CO., Plaintiff in Error,

vs.

B. R. LACY, Treasurer of North Carolina, Deft. in Error.

In Error to the Supreme Court of the State of North Carolina.

BRIEF

For Plaintiff in Error,

BY

THOMAS B. FELDER, JR.,

OF

FELDER & ROUNTREE,

ATTORNEYS AND COUNSELORS,

ATLANTA, GEORGIA.

SUPREME COURT OF THE UNITED STATES.

ARMOUR PACKING COMPANY, Plaintiff in Error, v. B. R. LACY, State Treasurer of North Carolina. Defendant in Error.	No. 804. October Term, 1904. In Error to the Supreme Court of the State of North Carolina.

STATEMENT OF THE CASE.

This case comes up under writ of error to the Supreme Court of North Carolina on final judgment upholding the constitutionality of the Tax Act of 1903 as applied to the Plaintiff in Error.

The Act in question, so far as applicable to the present case, is as follows:

GENERAL TAX ACT FOR 1903.

Section 56. Packing Houses.—Upon every meat packing-house doing business in this State, $100.00 for each county in which said business is carried on.

The case originated in the Superior Court of Buncombe County, North Carolina, upon a proceeding, known in said State as "controversy without action."

The pleadings in this suit raised a federal question by alleging the Act to be in violation of the Fourteenth Amendment to the Constitution of the United States. (Rec. p 9).

It is admitted in the case agreed that the only meat packing-house business done in the State of North Carolina by Plaintiff in Error is in selling and offering for sale the products of its meat packing-house situate in Kansas City, Missouri.

It is also admitted in the case agreed that in every place in the State of North Carolina where the products of the packing-house of Plaintiff in Error are sold, or offered for sale, the identical same products are likewise sold and offered for sale in competition with the goods of Plaintiff in Error by commission merchants, brokers and butchers; that the said commission merchants, brokers and butchers sell by wholesale and retail in competition as aforesaid with Plaintiff in Error; that said commission merchants, brokers and butchers are not engaged in a meat packing-house business in North Carolina or elsewhere, hence are exempt from the tax levied under Section 56 of the Revenue Act of the Legislature of 1903.

Upon hearing the argument of counsel, and after due consideration of the same, it was adjudged by the court, (1) that the defendant was doing a meat packing-house business in Buncombe County, North Carolina. (2) That the Act of the Legislature of North Carolina of 1903 imposing the tax referred to does not contravene Article 5, Section 3, of the Constitution of North Carolina. (3) That said Act is not repugnant to the Fourteenth Amendment to the Constitution of the United States. (4) That said Act is not in violation of the statutes of the United States regulating inter-state commerce. (5) That said Act in taxing meat packing-houses, such as defendant operates in Buncombe County, North Carolina, is not arbitrary or class legislation. (Rec. p 11).

An appeal was taken to the Supreme Court of North Carolina to the February term, 1904, and upon the trial upon said appeal the judgment of the court below was affirmed. (Rec. pp 13, 14, 15, 16, 17).

SPECIFICATIONS OF ERROR RELIED ON.

FIRST.

That the court erred in holding and adjudging that the provisions of Section 56, Chapter 247, page 339, of the Laws of North Carolina

of 1903, which imposed a license tax upon every meat packing-house doing business in said State of $100.00 in each county in which said business is carried on, was applicable under the agreed statement of facts to it, the Plaintiff in Error.

SECOND.

That the court erred in holding and adjudging that the provisions of said Section 56, Chapter 247, page 339, of the Laws of North Carolina of 1903, which imposed a license tax upon meat packing-houses doing business in said State of $100.00 for each county in which said business is carried on, was not in conflict with the provisions of section 1 of the Fourteenth Amendment to the Federal Constitution, in that the provisions of said Act did not deprive it, the said Plaintiff in Error, a citizen of the United States and of the State of New Jersey, of rights, privileges and immunities secured to other citizens of the United States and of said State, nor of its liberty or property without due process of law, nor the equal protection of the law. It insists that the said law should have been declared unconstitutional and void for that the State of North Carolina by and through the provisions of said Act seeks, (a), to deprive Plaintiff in Error of its property under an arbitrary and unlawful classification without due process of law; (b), to abridge its privileges and immunities as a citizen of the United States; and, (c), to deny to it the equal protection of the law.

THIRD.

That the court erred in holding that the provisions of Section 56, Chapter 247, page 339, of the laws of North Carolina of 1903, are not in conflict with the provisions of Section 3, of Article 1, of the Federal Constitution, giving to Congress the exclusive right to regulate commerce among the several States. It insists that said Act is an illegal interference with, and regulation of, inter-state commerce.

FOURTH.

That the court erred in holding that the provisions of said Act,

Section 56, Chapter 247, page 339 of the Laws of North Carolina of 1903, are not in conflict with the provisions of the Federal Constitution which prohibit arbitrary and class legislation.

FIFTH.

That the court erred in affirming the judgment of the Superior Court of Buncombe County, North Carolina, and in not reversing said judgment and holding that said exaction of said license was illegal and void, and in not remanding the case for further proceedings.

ARGUMENT.

The Armour Packing Company, the Plaintiff in Error, is a corporation incorporated under the laws of the State of New Jersey, and having its head office and principal place of business in Kansas City, Missouri.

Plaintiff in Error qualified itself to do business in the State of North Carolina by filing its charter in said State, and by paying the initiation fees required to do business in said State, as is provided by the statues of said State, and thereby became a citizen of said State and entitled, as such citizen, to the equal protection of the laws of said State and of the United States.

ON THE QUESTION OF THE EQUAL PROTECTION OF THE LAWS.

It is well settled law that corporations are persons within the provisions of the Fourteenth Amendment to the Constitution of the United States.

Santa Clara County vs Southern Pacific Ry., 118 U. S., 394.
Pembina Mining Co., vs Pennsylvania, 125 U. S., 181, 189.
Missouri Pacific Ry. vs Mackey, 127 U. S., 205.
Minneapolis & St. L. Ry. vs Herrick, 127 U. S., 210.
Minneapolis & St. L. Ry. vs Beckwith, 129 U. S., 26.
Charlotte & Columbia R. R. vs Gibbs, 142 U. S., 386.
Covington & Lexington Turnpike Co. vs Sanford, 164 U. S., 578.

The rights and securities guaranteed to persons by that instrument cannot be disregarded in respect to these artificial entities called corporations any more than they can be in respect to the individuals who are the equitable owners of the property belonging to such corporations. A State has no more power to deny to corporations the equal protection of the law than it has to individual citizens.

Gulf, Colorado & Santa Fe Ry. vs Ellis, 165 U. S. 154.

A tax on the privilege of selling goods is in effect a tax on the goods themselves.

117 Ga., 969.

Welton vs Missouri, 91 U. S., 275.

It is well established and sound law that where the burden of a tax falls on the thing which is the subject of taxation, the tax is to be regarded as laid on the thing rather than on the individual who is charged with the duty of paying it into the treasury.

Brown vs Maryland, 12 Wheat. 419.

What must constitute a denial of the equal protection of the law will depend, in this view, in a large measure upon what rights have

been conferred, or protection extended, under the constitution and laws of the particular State in which the question arises. As the constitution and laws of the States vary, the proposition of each case must, to an extent, depend upon its own facts, is especially applicable to this class of cases. When the State undertakes to deal with its citizens by legislation, it does so under certain limitations, and it may not single out a class of citizens, and subject that class to an oppressive discrimination, especially in respect to those rights so important as to be protected by constitutional guaranty. That the prohibitions of that amendment are now regarded as protecting the citizen against a denial of the equal protection of the law, and against taking property without due process of law, under the power of taxation, is a proposition clearly deducible from the many causes in which that question has been considered. And it does not militate against this view that on account of the importance of taxation to the existence of government the Supreme Court of the United States has bestowed upon the amendment and its proper interpretation the greatest consideration and much care in relation to that subject.

N. C. & St. L. Ry. vs Taylor, 86 Fed. 185, 186.

It may be true that the proposition that a tax statute, or the tax laid under a statute, is in violation of the constitution of the State, is not of itself necessarily sufficient to constitute a violation of the Fourteenth Amendment; but when, in addition to the violation of the State constitution, the statute results in an arbitrary and oppressive discrimination in regard to a large class of citizens, or a large species of property, it is such class legislation and such denial of the equal protection of the laws as renders it obnoxious to the Fourteenth Amendment. And the State constitution is important in determining what the rights of the citizen are, and whether equal protection of the law is being denied.

N. C. & St. L. Ry. vs Taylor, 86 Fed. 186.

On the assumption that "what must constitute a denial of the equal protection of the law will depend upon what rights have been conferred, or protection extended, under the constitution or laws of the particular State in which the question arises," it becomes pertinent to examine in this connection the constitution and laws of the State of North Carolina.

ON THE QUESTION OF UNIFORMITY IN TAXATION GUARANTEED BY THE CONSTITUTION AND LAWS OF THE STATE OF NORTH CAROLINA.

Sec. 3. TAXATION SHALL BE BY UNIFORM RULE AD VALOREM.

Laws shall be passed taxing by a uniform rule all monies, credits, investments in bonds, stocks, joint-stock companies, or otherwise.

Vol. 2, Code of North Carolina of 1883, p 706.

What was the purpose of the Legislature in the enactment of Section 56, the Act above quoted?

We can ascertain this only by an examination of former revenue acts, as well as this one; and it will help us to ascertain the legislative intent by a process of elimination, ascertaining the things and occupations which it is evident the Legislature intended should not be taxed by the Act of 1903.

First. It is evident that the Legislature of 1903 did not intend to impose a tax upon the agents of packing-houses. Such a tax was imposed by Section 66 of the Revenue Act of 1901, Chapter 9, Public Laws of 1901, and the tax imposed by that section upon agents of packing-houses was $100.00 for the State and $100.00 for the county in each county where business was done. No tax is imposed anywhere upon agents of packing-houses by the Act of 1903. So it is plain it was not the purpose of the last General Assembly to tax the agents.

Next, it is clear that it was not the purpose of the Act of 1903 to tax sellers of fresh meat in this State. Such a tax was imposed by the Act of 1901, by Section 40. No such tax appears anywhere in the Revenue Act of 1903, and, the Act of 1901 being repealed, we have the legislative intent clearly expressed that there shall be no tax imposed upon the sellers of meat. We find that for the business or the franchise of doing business as a corporation in this State a tax is imposed under Section 81 of the Revenue Act of 1903, a similar tax being imposed by Section 91 of the Revenue Act of 1901.

So it is clear that the Legislature did not intend to tax the business of selling meat, nor the occupation of representing as an agent a packing-house in this State, and that it did intend to tax corporations, whether chartered by the law of this State or doing business in this State, as is provided in Section 81 of the Revenue Act.

This clause of the Constitution and the statutes of the State on the subject of uniformity of taxation have been construed by the Supreme Court of the State of North Carolina and the construction will, we apprehend, be adopted by this Court.

In the case of State vs Moore, 113 N. C., 697, Sheppard, C. J., rendering the opinion, said:

> "That uniformity in its legal and proper sense is inseparably incident to the power of taxation, whether applied to taxes on property or those imposed on trades, professions, etc. Therefore, the Act of 1891, page 75, defining an immigrant agent to mean any person engaged in hiring laborers in the State to be employed beyond the limits of the same, and providing that immigrant agents shall pay to the State Treasurer a license fee of $1,000 before they can hire laborers in the State of North Carolina to be employed beyond the limits of the State, is, if considered as an exercise of the taxing power of the Legislature, in contravention of the Constitution, Article 5, Section 3, authorizing the Legislature to tax trades, professions, franchises, etc. and is void for want of uniformity."

It is also held in this decision that this tax was imposed for the purpose of raising revenue and not in the exercise of the police power. The language of the Constitution of the State of North Carolina as relates to uniformity is practically the same as that of the Constitution of Georgia and the Constitution of Missouri.

In the case of Worth vs Railroad, 89 N. C., 291, Smith, C. J., in delivering the opinion of the court, said:

> "We should be reluctant to hold if there were no question of constitutional right involved that this method of levying tax-

es was sanctioned by our own Constitution, and consistent with the equality and uniformity which it contemplates. The uniform rule to be observed in the exercise of the taxing power seems so far applicable to the tax imposed on trades, professions, etc. as to require that no discriminating tax be imposed upon persons pursuing the same vocations, while varying amounts may be assessed upon avocations or employments of different kinds."

Again, in Puitt vs Commissioners, 94 N. C., 709, it was said:

"The principle of uniformity pervades the fundamental law, and while not in the Constitution applied in express terms to the tax on trades, professions, etc., necessarily underlies the power of imposing such tax."

In this last case the court adopted the words of Miller, Justice, in the Railroad Tax Case, 92 U. S., 575:

"That while one tax may be imposed upon inn-keepers, another upon ferries and a still different tax on railroads, the taxation must be the same upon each class; that is, the same tax upon all inn-keepers, upon all ferries and upon all railroads, in their respective classes as taxable subjects."

And again in the State vs Powell, 100 N. C., 525, this same language was accepted, and it was repeated that "uniformity in its legal and proper sense is inseparably incident to the power of taxation."

Whatever refinements of reasoning may be indulged in, there are but two substantial phases to the imposing of license tax upon professions and occupations. It is either a license imposed in the exercise of the police power of the State, or it is a tax laid in the exercise of the power of taxation.

Tiedeman Lim. of P. O. p 101. Cooley on Taxation, p 403. In re Jacobs, N. Y. 198, Tiedeman, supra, 1.

"This power under our federal system of government has been left with the States and the only limit to this exercise in

the enactment of laws by their legislatures is that they shall not prove repugnant to the fundamental law, the State Constitution and the Federal Constitution with the laws made under its delegated powers."

Cooley on Constitutional Limitations, 574.

The clause of the Constitution of the State of Missouri on the subject of uniformity is substantially the same as the Constitution of the State of North Carolina upon this subject, and the Supreme Court of the State of Missouri has construed this provision of the State constitution in three notable decisions.

In the case of Kansas City vs Crush, 151 Mo. 135., Gantt, P. J., rendering the opinion, the court said:

"Nor is there any reason why a merchant who deals altogether in produce should be required to pay $50.00 for the privilege of carrying on business, while his neighbor who deals in groceries, hardware or dry-goods is wholly exempt from a license tax. Both are merchants and neither is subject to more burdens than the other. No doubt exists as to the power of the Legislature or of a special charter to divide the various occupations into different classes, and that a tax upon all persons belonging to one class would not be obnoxious to the Constitution mainly because another class was not taxed, but when, as in this case, the ordinance singles out a part of a legal class, then those against whom this unjust discrimination is directed may justly complain of the violation of the Constitutional guaranty of the equality of taxation and 'equal protection of the laws'."

In the case of the City of St. Louis vs Sternberg, 69 Mo., p 289, it was held:

"That the ordinance of the City of St. Louis imposing a tax of $25.00 a year on every lawyer in the city without reference to the value of his practice, is not obnoxious to the constitutional provisions which require that taxation shall be uni-

form. When a municipality having power to tax callings, trades or professions, taxes alike all persons engaged in the same business, such taxation is equal and uniform."

In the case of the City of St. Louis vs Speigel, 75 Mo. p 145, Sherwood, C. J. rendering the opinion, it was held:

"A license fee imposed on meat shops is a tax and must be uniform within the territorial limits of the authority imposing the same. Constitution of 1875, Article 10, Section 3. A City ordinance, therefore, which requires a license fee of $100.00 in one part of the city, and $25.00 in the rest, is void. That the fee is a tax when imposed for the purpose of revenue is established by abundant authority."

Dillon on Municipal Corporations, Sec. 768.
Ward vs Maryland, 12 Wall., 418.
Cooleys Const. Limitations, 201, 494.

Now, then, taxation on business or occupation in the State of North Carolina to be constitutional must be uniform upon all busness of the same class of subjects. The tax must be on the business or occupation, and it must also be on a class, and must be capable of enforcement against each and all within the class. If, therefore, a tax on the privilege of selling goods is in effect a tax on the goods themselves, it must be admitted that as applied to the Plaintiff in Error this tax is a discrimination in its practical administration, as all persons engaged in selling packing-house products within the State of North Carolina for the purposes of taxation naturally belong to the same class as the meat packing-houses. If an act shows a discrimination upon its face, or in its practical administration, it will be declared obnoxious to the Fourteenth Amendment to the Constitution of the United States, which guarantees to all citizens the "equal protection of the laws."

Kehrer vs Stewart, 197 U. S. 69.

It has been frequently held that the State has the right to classify occupations and to impose different taxes upon different occupa-

tions, but all belonging to a natural class must be assigned to it by the act making the classification.

Cook vs Marshall County, 196 U. S. 261, 275.

THE EQUAL PROTECTION OF THE LAWS APPLIES TO WHAT?

The Fourteenth Amendment does not profess to secure to all persons in the United States the benefit of the same laws and remedies. Great diversities may and do exist. All that a citizen can demand under the last clause of the Fourteenth Amendment is that he shall not be denied the same protection of the laws which is enjoyed by other persons, or other classes, in the same place and under like circumstances.

Mo. vs Lewis, 101 U. S. 22.

The denial must be the result of the constitution or laws of the State, Williams vs Mississippi, 170 U. S. 219. Corporations are persons in the meaning of the Amendment, Santa Clara vs So. Pac. Ry., 118 U. S. 394. If the law is fairly administered as to Plaintiff in Error he cannot complain (he properly assessed, others too low), New York vs Baker, 179 U. S. 279; nor do errors of State court in the mere administration of the tax law, Lent vs Tillson, 140 U. S. 331; even if erroneous, if case fully heard and decree rendered, there is due process of law, Central Land Co. vs Lairdley, 159 U. S. 112; nor is a person denied equal protection of the laws as to tax assessment where notice is given and opportunity to be heard allowed, Fall Brook vs Bradley, 164 U. S. 158. This section does not apply so much to the administration of the law as it does to the law itself. Nor is the amendment intended to interfere with the police power of the State. 10 R. N. 950. The section applies to State action and not that of individuals. Virginia vs Rives, 100 U. S. 318. Civil Rights Cases, 109 U. S. 17; but extends to all acts of State, legislative, executive or judicial, Scott vs McNeal, 154 U. S. 45; Chicago R. R. vs Chicago, 166 U. S. 233. So it has been held that the privileges and immunities guaranteed are the fundamental ones, protection by government, right to acquire and possess property of every

kind, pursue and obtain happiness and safety, subject to the restraints exacted for general good; of national citizenship, right to go to seat of government and transact business with it, free access to its sea ports, care and protection of the government in the high seas and in foreign States. Slaughterhouse Cases, 16 Wall., 76, 79.

DOES NOT APPLY TO WHAT?

The provision does not apply to special privileges. Paul vs Virginia, 8 Wall., 180. Special legislation is not repugnant to this clause, if all persons subject to it are treated alike under the same conditions. Williams vs Morris, 12 Wheat, 128; Mo. Ry vs Mackay, 127 U. S. 209; Pacific Express Co. vs Seibert, 142 U. S. 352; but they must be placed on all alike, Atchison Ry. vs Matthews, 174 U. S. 104; and a higher license tax cannot be imposed upon non-resident traders than on resident. Ward vs Maryland, 12 Wall., 429. This is so as a result from the law itself or from its practical administration. Kehrer vs Stewart, 197 U. S. 69. The rates may be varying, but there must be no discrimination between members of a class. Home Ins. Co. vs New York, 134 U. S. 606; Giozza vs Tiernan, 148 U. S. 662; and the States have the power of classification, Gulf Ry. vs Ellis, 165 U. S. 158; subject only to the rule that the classification be made on reasonable grounds and must not be arbitrary. Magoun vs Illinois Bank, 170 U. S. 298. It cannot make purely arbitrary classification and impose upon a class special burdens. Atchison Ry. vs Matthews, 174 U. S. 106. The exception to this rule seems to be made in the case of Cargill vs Minnesota, 180 U. S. 469, where it was held that a license may be required of warehouses situated on a railroad although none be required of warehouses not so situated, but it seems that this classification was permitted on the ground that it was a regulation of a quasi public highway.

ON THE SUBJECT OF THE ACT BEING A BURDEN UPON, AND REGULATION OF, INTERSTATE COMMERCE.

Despit the decision of this court, found in Kehrer vs Stewart, 197 U. S., decided at page 60, in which it was held that if the Supreme Court of the State construes an act of this character to apply solely to business of the company done within the State and not to its inter-state business, that this court would accept the construction of the State statute, and the Supreme Court of North Carolina having construed this statute as applying solely to intra-state business, we nevertheless insist upon the third assignment of error.

We submit with confidence that the construction placed upon the act by the Supreme Court of North Carolina did violence to the legislative intent; that the purpose of the legislature was to impose a tax upon the entire volume of business done by Plaintiff in Error and not alone upon the domestic business, and if the tax had been intended to apply to the domestic business alone, the amount thereof would of necessity have been very much smaller inasmuch as the proportion of the domestic business to the foreign business is infinitesimal.

The Legislature of Tennessee (Acts 1897 enacted, "Nineteen. —Upon each sleeping car company doing business in this State $500.00 per annum."

This act is identical with the act which is under assault. This court in Allen vs Pullman Palace Car Co., 191 U. S. 171, held, "we are not at liberty to read into the statute terms not found therein or necessarily implied, with a view to limiting the tax to local business, which the Legislature in the terms of the act imposed upon the entire business of the company. We are of opinion that taxes exacted under the act of 1897 are void as an attempt by the State to impose a burden upon inter-state commerce." * * * * * "The act in its terms applies to cars running through the State as well as those whose operation is wholly intra-state. It applies to all alike and requires payment for the privilege of running the cars of the company,

regardless of the fact that some of the cars are used in inter-state traffic and some in that which is wholly within the borders of the State. So it is that the act is void because the intra and inter-state business is not divided, and not being divided is an attempt by the State to impose a burden upon inter-state commerce."

The premises considered, we respectfully submit that Plaintiff in Error is a citizen of the United States; engaged in a legitimate business venture; engaged in the business of carrying on inter-state commerce; that all of the laws of the State of North Carolina prescribing the terms for its admission into the State to do business have been complied with; that an act of the Legislature has been passed which, upon its face, imposes a burden upon inter-state commerce, therefore we earnestly submit that if this court does "not feel at liberty to read into the statute terms not found therein or necessarily implied, with a view to limiting the tax to local business, which the Legislature in the terms of the act imposed upon the entire business of the company," constat the Supreme Court of North Carolina should not be accorded the liberty of reading into the act under assault "terms not found therein or necessarily implied."

THOMAS B. FELDER, JR.,
of Felder & Rountree,
Attorneys and Counselors, Atlanta, Ga.

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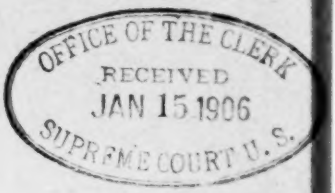


SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 53.

ARMOUR PACKING COMPANY, PLAINTIFF IN ERROR,

vs.

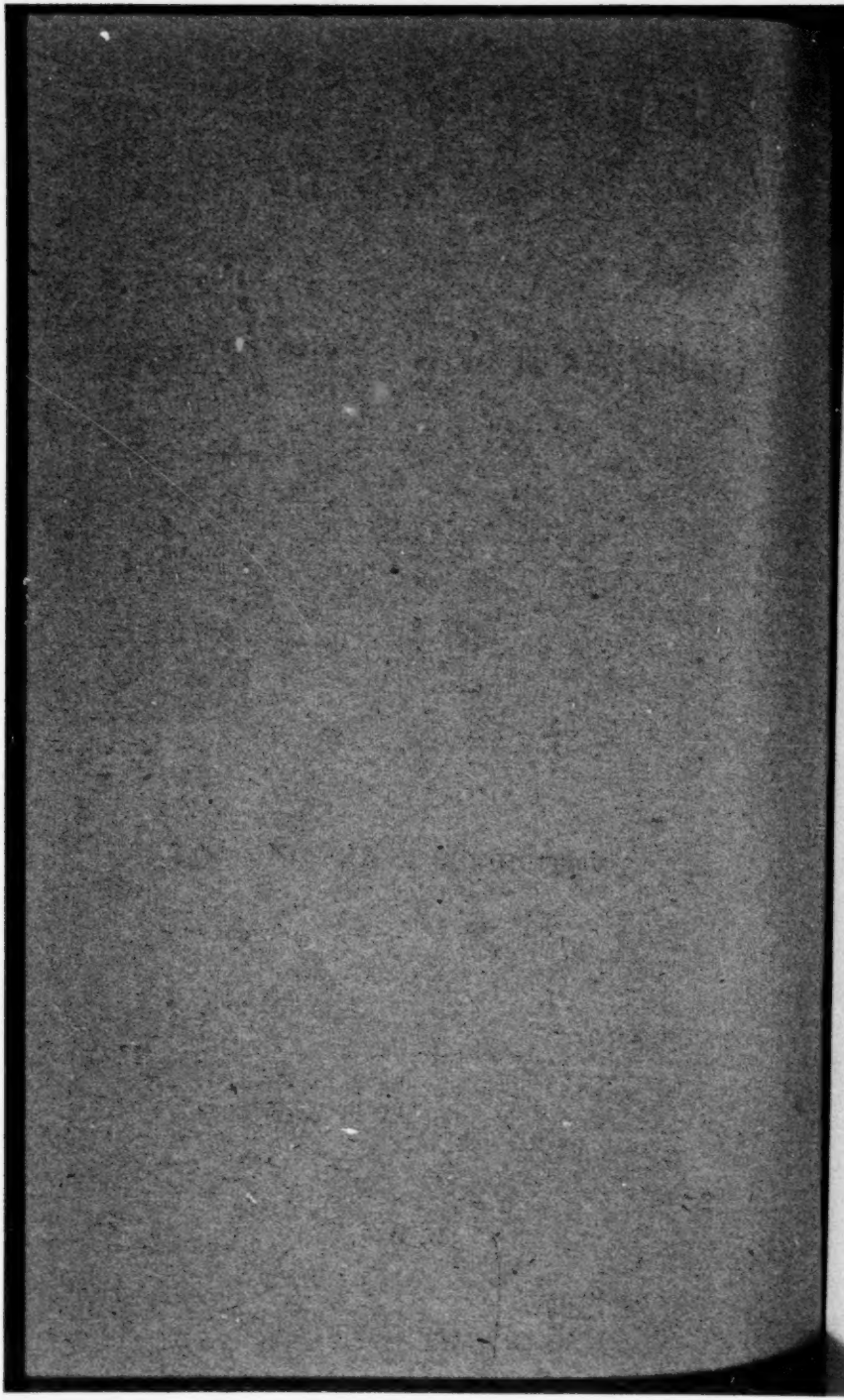
B. R. LACY, TREASURER, &C.

PETITION FOR REHEARING.

THOMAS B. FELDER, JR.,
Attorney for Plaintiff in Error.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 19838

(19,404.)



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 53.

ARMOUR PACKING COMPANY, PLAINTIFF IN ERROR,

vs.

B. R. LACY, TREASURER, &C., DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

PETITION OF PLAINTIFF IN ERROR FOR A REHEARING.

To the Honorable the Supreme Court of the United States:

Your petitioner, the plaintiff in error in the above-entitled cause, respectfully asks this honorable court to grant a rehearing in said cause, and shows to the court here why a rehearing should be granted, to wit:

1. Mr. Justice Brewer was not present when said case was argued, and therefore did not hear the oral arguments in said cause. In the absence of Justice Brewer the case was heard by eight justices of this court, four of whom concurred in the opinion rendered, while four dissented.

2. We respectfully submit that the honorable justices who concurred in the opinion of this court, in holding that the issue of fact found by the supreme court of North Carolina was against our contention, committed error, this court having held as follows:

> "After recapitulating from the agreed statement the particulars of the business transacted in North Carolina, the court applied the rule that the legislature could prescribe such conditions as it saw fit on the transaction of business by a foreign corporation within the State, and held that the license tax was the condition upon which defendant was permitted to do the business so described; and cited Osborne *vs.* Florida, 164 U. S., 560, as decisive on the question that the license tax applied only to business within the State and not to that which was interstate in its character, and added: 'The defendant doing business in this State and the license tax being exacted only by virtue of its intrastate business, the first two grounds of objection are overruled.'"

The decision of the supreme court of North Carolina and the record discloses that the imposition of this tax was not a condition precedent to doing business in the State of North Carolina, because plaintiff in error qualified itself to do business within the State of North Carolina by filing its charter in said State and by paying the initiation fees required to do business in said State, as provided by the statutes of said State, in the sum of $1,000, and thereby became a citizen of said State, and entitled as such citizen to the equal protection of the laws of said State and of the United States.

We respectfully submit that the honorable justices who concurred in the opinion, holding that the court of last resort of the State of North Carolina having found the fact that plaintiffs in error were doing a meat-packing-house business in the State of North Carolina against our contention, and that this honorable court is therefore bound by such findings, committed error. In the "case agreed" it

was admitted that a "meat-packing house" is a place where animals are slaughtered and their carcasses are prepared and dressed for commercial purposes, and that plaintiff in error conducted this business *without the State of North Carolina;* that after the carcasses were thus prepared for commercial purposes they were shipped into the State of North Carolina and sold through its agents and brokers as any other article of commerce. We contend that the *decision* of the supreme court of North Carolina, in connection with the "*case agreed*," fairly construed, means that plaintiff in error *did not do* any of the things that constitute a *meat-packing-house business* in the State of North Carolina, and we therefore insist, with all deference to the court, that instead of the fact being found by the supreme court of North Carolina against our contention it was found in our favor.

In the "case agreed" it is shown that the only business conducted by plaintiff in error in the State of North Carolina is the *business of selling its packing-house products;* that at every *point* in the State of North Carolina where said *packing-house products* are *sold* there are *merchants* and *brokers* who buy and sell on their own account packing-house products and who conduct no packing-house business in the State of North Carolina or elsewhere; that these packing-house products are sold in *competition* with our goods in said State, and that they are exempt from the burdens of this taxation. This being true, we contend that the act in question is class legislation, an unjust discrimination against plaintiff in error, and the practical operation of the same has the effect of denying to plaintiff in error the equal protection of the laws guaranteed by the fourteenth amendment to the Constitution of the United States.

The case of Patch *vs.* White, 117 U. S., page 211, was argued before eight justices in the absence of Mr. Justice Bradley. A petition for rehearing was filed and granted and the judgment of the court below thereafter reversed. In

the case of The St. Louis Public Schools *vs.* Walker & Ryan, 76 U. S., 603, 604, this court holds:

> "When the court does not on its own motion order a rehearing, it will be proper for counsel to submit without argument, a brief written or printed suggesting the point or points that are important," etc.

Wherefore, the premises considered, for the reasons set forth herein and upon the authorities cited, we most respectfully ask this honorable court that a rehearing of said cause be granted.

THOS. B. FELDER, JR.,
Attorney for Plaintiff in Error.

I do hereby certify that I believe the foregoing petition is well founded and the same is not made for the purpose of delay.

THOS. B. FELDER, JR.,
Attorney for Plaintiff in Error.

FILE COPY.

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Clerk.

(19404)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1905

(No. 53)

ARMOUR PACKING COMPANY

PLAINTIFF IN ERROR

versus

B. R. LACY, STATE TREASURER OF NORTH CAROLINA

DEFENDANT IN ERROR

BRIEF OF ROBERT D. GILMER

ATTORNEY-GENERAL OF NORTH CAROLINA

FOR THE DEFENDANT IN ERROR

E. M. UZZELL & CO., PRINTERS, RALEIGH, N. C.

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DEFENDANT IN ERROR

OCTOBER TERM, 1905

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

(No. 53)

STATEMENT OF THE CASE.

This case arises upon the following state of facts: The Armour Packing Company, incorporated under the laws of the State of New Jersey, is engaged in the business of packing meats for sale and consumption, and has its principal place of business in Kansas City, in the State of Missouri. The corporation also has places of business, including warehouses and cold-storage plants, in Wilmington, Greensboro, Asheville, Charlotte, and Fayetteville, in the State of North Carolina. At each of said places plaintiff in error has one or more

employees, that is, book-keepers, stenographers, shipping clerks, salesmen, drivers, laborers who box said meats and who wrap and crate goods for delivery as they are sold. The corporation does not have, anywhere within the State of North Carolina, any meat packing-houses for slaughtering, dressing, curing or manufacturing the products of any animals for food or commercial use, but takes orders, which are forwarded to Kansas City, and the packing-house products are shipped in bulk to the various places in North Carolina above mentioned, and distributed in pursuance of said orders. Certain meats and other packing-house products are also shipped from Kansas City to the North Carolina points, without a previous sale or contract of sale. These products are stored in the warehouses or cold-storage plants of the corporation, and are kept for sale in due course of trade as domestic business, and remain in storage until disposed of on orders received after they have been stored. There are, in the cities hereinbefore mentioned, commission merchants, brokers and butchers who sell, by wholesale and retail, packing-house products in competition with Armour & Co., but who are not engaged in a meat packing-house business in North Carolina or elsewhere. In the State of North Carolina, at all points where the Armour Packing Company is engaged in business, and at various other places in said State, there are engaged in business as the Armour Packing Company is engaged, packing-houses which pack articles of food other than meat, and offer them for sale in said State, such as peas, beans, tomatoes, corn, pumpkins, fruits, fish, oysters, etc. The products of said packing houses are articles of food and commerce and are sold in the State of North Carolina through agents, brokers, wholesale and retail merchants, just as the products packed by the Armour Packing Company are sold.

This case originated in the Superior Court of Buncombe County upon facts agreed in an "action submitted without controversy." The judgment of the Court was invoked upon the following points (record, p. 9):

(a). Is the defendant engaged in doing a packing-house business in the State of North Carolina, and subject to the tax of $100 for each county above named, and which is sought to be collected?

(b). If it should be held that the Armour Packing Company is engaged in doing a packing-house business under the agreed state of facts, in North Carolina, does not said act contravene Article V, section 3, of the Constitution of the State of North Carolina, which provides:

"Laws shall be passed for taxing by uniform rules?"

(c). Is not this act repugnant to the Fourteenth Amendment to the Constitution of the United States, which provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of any citizen of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any one within the jurisdiction the equal protection of the law?"

(d). Is not said act violative of the statutes of the United States which regulate interstate commerce?

(e). Is not the act singling out "meat packing-houses" for taxation, arbitrary or class legislation, and is it not prohibited by the Constitution and laws of the State of North Carolina and of the United States?

Upon the hearing of the case in the Superior Court of Buncombe County it was adjudged by the Court: (*a*). That the defendant was doing a meat packing-house business in Buncombe County, North Carolina. (*b*). That the act of the Legislature of North Carolina of 1903 imposing the tax referred to does not contravene Article V, section 3, of the Constitution of North Carolina. (*c*). That said act is not repugnant to the

Fourteenth Amendment to the Constitution of the United States. (*d*). That said act is not in violation of the statutes of the United States regulating interstate commerce. (*e*). That said act in taxing meat packing-houses, such as defendant operates in Buncombe County, North Carolina, is not arbitrary or class legislation.

The Supreme Court of North Carolina, at February Term, 1904, affirmed the judgment of the Superior Court of the County of Buncombe. (134 North Carolina, 567).

ASSIGNMENTS OF ERROR.

(Record, pp. 3, 4).

FIRST.

That the Court erred in holding and adjudging that the provisions of section 56, chapter 247, page 339, of the Laws of North Carolina of 1903, which imposed a license tax upon every meat packing-house doing business in said State of $100 in each county in which said business is carried on, was applicable under the agreed statement of facts to it, the plaintiff in error.

SECOND.

That the Court erred in holding and adjudging that the provisions of said section 56, chapter 247, page 339, of the Laws of North Carolina of 1903, which imposed a license tax upon meat packing-houses doing business in said State of $100 for each county in which said business is carried on, was not in conflict with the provisions of section 1 of the Fourteenth Amendment to the Federal Constitution, in that the provisions of said act did not deprive it, the said plaintiff in error, a citizen of the United States and of the State of New Jersey, of rights, privileges and immunities secured to other citizens of the United States and of said State, nor of its liberty or property without due process of law, nor the equal protection of the law. It insists that the said law should have been declared uncon-

stitutional and void, for that the State of North Carolina, by and through the provisions of said act, seeks (*a*) to deprive plaintiff in error of its property under an arbitrary and unlawful classification without due process of law; (*b*) to abridge its privileges and immunities as a citizen of the United States; and (*c*) to deny to it the equal protection of the law.

THIRD.

That the Court erred in holding that the provisions of section 56, chapter 247, page 339, of the Laws of North Carolina of 1903, are not in conflict with the provisions of section 3 of Article I of the Federal Constitution giving to Congress the exclusive right to regulate commerce among the several States. It insists that said act is an illegal interference with, and regulation of, interstate commerce.

FOURTH.

That the Court erred in holding that the provisions of said act, section 56, chapter 247, page 339, of the Laws of North Carolina of 1903, are not in conflict with the provisions of the Federal Constitution which prohibit arbitrary and class legislation.

FIFTH.

That the Court erred in affirming the judgment of the Superior Court of Buncombe County, North Carolina, and in not reversing said judgment and holding that said exaction of said license was illegal and void, and in not remanding the case for further proceedings.

ARGUMENT.

The case at bar is covered by *Kehrer v. Stewart*, decided by this Court February 27, 1905, and reported in 197 U. S., 60. That case was a writ of error to the Supreme Court of Georgia, involving the constitutionality of a statute imposing a tax upon packing-house agents, and the liability of an agent of Nelson Morris & Co., a meat-packing firm of Chicago, to pay the

same. The facts contained in the petition in *Kehrer v. Stewart* are practically identical with those in the case at bar. In that case, as here, it was contended that Nelson Morris & Co. did not slaughter, dress, cure, pack, or manufacture the products of animals for food anywhere within the State of Georgia, and that, therefore, the firm was not doing a packing-house business within the State. It was also contended that the statute violated the commerce clause of the Constitution of the United States, and that it was invalid in that it denied to the petitioner the equal protection of the laws. The Supreme Court of Georgia overruled these contentions. This Court, in reviewing that decision with reference to the question of interstate commerce, said:

> "It was admitted by the Supreme Court of Georgia in its opinion, and by both parties hereto, that a tax upon the seller of goods is a tax upon the goods themselves, *Brown v. Maryland*, 12 Wheat., 419; *Welton v. Missouri*, 91 U. S., 275; and that a tax upon goods sold in another State, delivered to a common carrier and consigned to the purchaser in the State of Georgia, was an illegal interference with interstate commerce. *Caldwell v. North Carolina*, 187 U. S., 622; *Norfolk, etc., Ry. Co. v. Sims*, 191 U. S., 441; *Stone v. State*, 117 Georgia, 292. It was therefore held that the tax, so far as applied to meats sold in Chicago and shipped to the petitioner in Georgia for distribution, could not be supported; but that so far as the petitioner was engaged in the business of selling directly to customers in Atlanta, he was engaged in carrying on an independent business as a wholesale dealer, and was liable to the tax.
>
> "This decision was correct."

Kehrer v. Stewart, supra, 60, 65.

In the case at bar the Supreme Court of North Carolina so held. Mr. Chief Justice Clark, delivering the opinion of the Court, said:

> "If the business of the defendant was solely that of shipping food products into this State, consigned directly to purchasers on orders previously obtained, it is clear that this would be interstate commerce, and a tax laid by the State upon such business would be illegal. But the defendant does a large business within the State, the selling of products already stored here on orders received after these products are thus stored. The tax is laid upon every meat packing-house 'doing business in this State.' The evident meaning of the Legislature is to tax the agency 'doing business' within this State, and not to lay any tax upon the interstate commerce of shipping products into the State to be directly or indirectly delivered to purchasers whose orders were obtained before the goods were shipped." *Lacy v. Packing Company*, 134 N. C., 567, 570.

The Supreme Court of North Carolina having declared that the statute applies solely to the business of the Armour Packing Company within the State of North Carolina, and that it does not apply to or affect its business which is interstate in its character, the statute does not violate the commerce clause of the Constitution.

THE ACT IMPOSING A LICENSE TAX UPON MEAT PACKING-HOUSES DOES NOT CONTRAVENE THE CONSTITUTION OF THE STATE OF NORTH CAROLINA.

The statute in question is as follows:

> "*Section 56. Packing-houses.* Upon every meat packing-house doing business in this State, one hundred dollars for each county in which said business is carried on."

This section is a part of what is known as Schedule B, in the taxing statutes of the State of North Carolina, chapter 247, Public Laws North Carolina, 1903. Section 26 of said chapter, introducing Schedule B, declares that the

> Taxes in this schedule shall be imposed as license tax "for the privilege of carrying on the business or doing the act named."

The following language appears in Article V of the Constitution of North Carolina:

> "SEC. 3. TAXATION SHALL BE BY UNIFORM RULE AD VALOREM.
>
> Laws shall be passed taxing, by uniform rule, all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise. * * * The General Assembly may also tax trades, professions, franchises, and incomes * * * ."

The foregoing provision of the Constitution was construed by the Supreme Court of North Carolina in *Gatlin v. Tarboro*, 78 N. C., 119. In that case it was pointed out that the constitutional requirement that taxation should be uniform and *ad valorem* applied in its terms only to the tax upon property, for the section adds: "The General Assembly may also tax trades * * * " without any requirement of uniformity as to the latter. But the opinion states, conceding that the tax on trades, occupations, etc., should be uniform (p. 122):

> "A tax on trades, etc., must be considered uniform when it is equal upon all persons belonging to the described class upon which it is imposed," citing Burroughs on Taxation, sec. 77, pp. 147, 159.

In *State v. Stevenson*, 109 N. C., 730, 733, it is said:

> "But treating it (the tax) as a 'classification,' this law puts all merchants dealing in farm products purchased from the producer in one class, and all merchants not dealing in farm products purchased from the producer in another class, and treats all in each class alike. There is no discrimination in either class. The power to select particular trades or occupations and subject them to a license tax cannot be denied to the Legislature—nor the power to tax such trades

according to different rules, provided the rule in regard to each business is uniform. 'It may be different upon a dealer in whiskey by retail from that on a wholesale dealer; or a dealer in whiskey from what it is on a dealer in grain,' etc., says Judge Rodman in *Gatlin v. Tarboro, supra,* 'and so it may, of course, be different on a dealer in farm products purchased from the producer from that on a dealer in other goods.' Indeed, there can be, strictly speaking, no uniform, proportional, and *ad valorem* tax on all trades, professions, franchises, and incomes, taken together, because they are so dissimilar that there is no practicable means of arriving at what should be a uniform tax common to them all. How could a tax be 'uniform' or proportional between the profession of law or medicine, livery-stable keepers, merchants, keepers of ferries, etc.? * * * It is within the legislative powers to define the different classes and to fix the license tax required of each class. All the licensee can demand is that he shall not be taxed at a different rate from others in the same occupation as 'classified' by legislative enactment."

The cases from the North Carolina Supreme Court Reports, cited in the brief of counsel for plaintiff in error, not only do not controvert the doctrine laid down in *Gatlin v. Tarboro,* and *State v. Stevenson,* but on the contrary support it. *State v. Moore,* 113 N. C., 697, is cited. That case involved the construction of an act of the General Assembly imposing a tax of one thousand dollars upon emigrant agents. The act, in express terms, excluded from its operation certain counties of the State west of the line defined in the statute. The Court said, p. 699:

> "Thus it appears that the same occupation may be lawfully and freely pursued in many of the counties in North Carolina, while in others a license fee of one thousand dollars is required to be paid into the State Treasury."

The act was declared unconstitutional for the simple reason that it did not operate alike in all the counties of the State, and therefore the uniformity contemplated by the Constitution was

lacking. The Court, however, cited *Gatlin v. Tarboro, supra,* and other cases, holding that a tax is uniform when it operates alike upon all persons belonging to a described class as classified by legislative enactment.

Worth v. Railroad, 89 N. C., 291, declared that a statute imposing a tax upon the gross receipts of some railroad companies, and upon the capital stock of others, was unconstitutional, for the reason that it was not uniform and did not apply alike to all belonging to the class of railroads, and *Gatlin v. Tarboro* was again cited with approval.

In *Puitt v. Commissioners,* 94 N. C., 709, the Court held that a law which allows a tax on the polls of one color, and on property owned by persons of the same color to be applied exclusively to the education of children of that color, was unconstitutional. *Gatlin v. Tarboro* was again affirmed, and the Court quoted with approval the language of Mr. Justice Miller in the *Railroad Tax Cases,* 92 U. S., 575, that

> "Taxation must be the same on all classes: that is, the same tax upon all innkeepers, upon all ferries, and upon all railroads *in their respective classes.*"

The following cases sustain the contention that the Legislature possesses the power to classify occupations by statutory enactment, and that the classification statutes will not contravene the rule of uniformity when the tax is imposed alike upon all of a class:

Albertson v. Wallace, 81 N. C., 479.
State v. Cohen, 84 N. C., 771.
State v. Powell, 100 N. C., 525.
State v. French, 109 N. C., 722.
Cobb v. Comrs., 122 N. C., 307.
State v. Green, 126 N. C., 1032.
State v. Carter, 129 N. C., 560.
State v. Hunt, Ib., 686.
State v. Roberson, 136 N. C., 587.

In this connection the cases cited by counsel for the plaintiff in error from the Supreme Court Reports of Missouri will be noted. These cases are referred to in Judson on Taxation (sec. 459, p. 600). The third paragraph in Judson begins as follows:

> "Reasonable classifications for taxation, however, such as between wholesale and retail merchants, between manufacturers and *quasi* public corporations and other corporations, between gas companies and other manufacturing companies, have been sustained, as also, in numerous cases, have license charges upon all those engaged in certain business."

The following cases are cited by Judson and are also referred to in the brief of counsel for plaintiff in error as illustrating an illegal classification:

> *Kansas City v. Grush,* 151 Mo., 128.
> *St. Louis v. Speigel,* 75 Mo., 145, and 90 Mo., 587.

We submit that an analysis of these cases will show that they are authorities for the defendant in error.

In *Kansas City v. Grush, supra,* it was held that under an ordinance of the said city "a produce dealer" was a *merchant,* and inasmuch as the ordinance did not tax a dry goods merchant, the tax was illegal. In this case it is said: "A city cannot tax some merchants and exempt others."

In the *Speigel case* (75 Mo., 145) it was held that:

> "A license fee imposed upon the keepers of meat shops is a tax, and must be uniform within the territorial limits of the authority imposing it."

A city ordinance which required a license fee of one hundred dollars in one part of the city and twenty-five in the rest is void.

To the same effect is the case of *St. Louis v. Speigel,* 90 Mo., 587, only in this case the illegality existed in allowing the

owners of meat shops to sell in the "new city limits," both at their shops and *on wagons,* while the owners of such shops in the "old city limits" could only sell at their shops.

The General Assembly of North Carolina had the power to create as a classification for taxation "meat packing-houses" as a separate and distinct class.

Ford v. State, 112 Ind., 373, 378.
Stewart v. Atlanta Beef Co., 93 Ga., 12.
Stewart v. Kehrer, 115 Ga., 184.
State v. Stevenson, 109 N. C., 730.

"It is as specific and identic as the business of a physician or a lawyer."

Stewart v. Atlanta Beef Co., supra.

THE DECISION OF THE STATE COURT THAT THE ACT IN QUESTION DOES NOT CONTRAVENE THE CONSTITUTION OF NORTH CAROLINA IS CONCLUSIVE.

In the case of *Duncan v. McCall,* 139 U. S., 449, the petitioner contended that a certain statute was void because it had not been enacted in accordance with the requirements of the Constitution of Texas. The following is the head-note of the decision:

> "2. The decision of the State courts on the question as to what are the laws of a State is binding upon those of the United States.
> "3. Whether certain statutes of a State have or have not binding force, it is for the State to determine, and that determination in itself involves no infraction of the Constitution of the United States, and raises no Federal question giving the courts of the United States jurisdiction."

In *Leeper v. Texas,* 139 U. S., 462, Mr. Chief Justice Fuller, in speaking for the Court, said:

"Whether the statutes of a Legislature of a State have been duly enacted in accordance with the requirements of the Constitution of such State is not a Federal question, and the decision of State courts as to what are the laws of the State is binding upon the courts of the United States," citing *South Ottawa v. Perkins*, 94 U. S., 260, 268 (24: 154, 157); *Post v. Kendall County Suprs.*, 105 U. S., 667 (26: 1204); *Norton v. Shelby County*, 118 U. S., 425, 440 (30: 178, 185); *Atlantic and G. R. Co. v. Georgia*, 98 U. S., 359, 366 (25: 185, 188); *Baldwin v. Kansas*, 129 U. S., 52, 57 (32: 640, 642).

O'Neill v. Vt., 144 U. S., 323.
McNulty v. California, 149 U. S., 645.
Lambert v. Barrett, 157 U. S., 697.
Bergemann v. Backer, 157 U. S., 655.
Kohl v. Lehlbach, 160 U. S., 293.
Howard v. Fleming, 191 U. S., 126.

This Court will confine itself to the consideration of Federal questions in writs of error to State courts, and if the State court correctly decided the Federal questions presented, this Court will "look no further into the case."

License Cases, 5 How., 618.
Matthews v. Zane, 7 Wheat., 206.
Home Ins. Co. v. Augusta, 93 U. S., 123.
Raymond v. Thomas, 91 U. S., 716.
Bonaparte v. Appeal Tax Court, 104 U. S., 592.
Presser v. Ill., 116 U. S., 269.
Port of Mobile v. Watson, 116 U. S., 306.

The Federal question relating to interstate commerce was correctly decided by the Supreme Court of North Carolina, *Kehrer v. Stewart, supra.* This feature of the case is therefore eliminated.

THE ACT IN QUESTION DOES NOT DENY TO THE PLAINTIFF THE EQUAL PROTECTION OF THE LAWS.

While a foreign corporation may sell its goods in a State or solicit sales in the transaction of interstate commerce as a right, it can only establish itself in a State and do business therein as a privilege granted by the State.

In *Paul v. Virginia,* 8 Wallace, 177, this Court decided that corporations must dwell in the place of their creation, and cannot, as a matter of absolute right, move to another sovereignty. The whole matter rests with the State. It may absolutely exclude a corporation organized in another State.

> *Lafayette Ins. Co. v. French,* 18 Howard, 404.
> *Bank of Augusta v. Earle,* 13 Peters, 519.
> *Waters-Pierce Oil Co. v. Texas,* 177 U. S., 28.

In the latter case the Court said, speaking through Mr. Justice McKenna, p. 45, citing *Paul v. Virginia* and *Bank of Augusta v. Earle:*

> "And it was also decided that a corporation did not have the rights of its personal members, and could not invoke that provision of sec. 2, Article 4, of the Constitution of the United States, which gave to the citizens of each State the privileges and immunities of citizens of the several States. See also, *Pembina Consol. Silver Min. and Mill. Co. v. Pennsylvania,* 125 U. S., 181, 31 L. Ed., 650, 8 Sup. Ct. Rep., 737; *Ducat v. Chicago,* 10 Wall., 410, 19 L. Ed., 972. And it has since been held, in *Blake v. McClung,* 172 U. S., 239, 43 L. Ed., 432, 19 Sup. Ct. Rep., 165, and in *Orient Ins. Co. v. Daggs,* 172 U. S., 557, 43 L. Ed., 552, 19 Sup. Ct. Rep., 281, that the prohibitive words of the Fourteenth Amendment have no broader application in that respect."

And in *Cable v. United States Life Insurance Co.,* 191 U. S., 288, 307, Mr. Justice Peckham said:

> "It has from an early day been held that a corporation created by one State could transact business in another State only with the consent, expressed or implied, of the latter State, and that such consent

> might be accompanied by such conditions as the latter State might think fit to impose, provided they were not repugnant to the Constitution or laws of the United States. * * * "

As the State has the right to exclude foreign corporations, it necessarily has involved therein the right to impose conditions on their admission into its jurisdiction; and if the State has the right to impose conditions, it necessarily follows that it has the right to classify.

This Court has sought by its utterances to impress the view that taxes imposed for revenue should be equal, and that there should be no discrimination. The Court, however, has not laid down that principle in the matter of license taxation, and has not decided that provisions for equality are applicable to license taxes.

In *Bell's Gap Rd. Co. v. Pa.*, 134 U. S., 232, 237, this Court said:

> "The provision in the Fourteenth Amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. * * * It may impose different specific taxes upon different trades and professions * * * ."

While the case of *Cotting v. Kansas City Stock Yards Company*, 183 U. S., 79, declared invalid a statute of the State of Kansas intended to apply only to the stock yards of Kansas City and not to stock yards in other portions of the State, Mr. Justice Brewer, in delivering the opinion of this Court in that case, recognized a different rule in the matter of classification for license taxation. He says, p. 111:

> "So again, exercising the undoubted right of classification, it may often happen that some classes are subjected to regulations, and some individuals are bur-

> dened with obligations, which do not rest upon other classes or other individuals not similarly situated. License taxes are imposed on certain classes of business, while others are exempt. It would practically defeat legislation if it was laid down as a rule that a statute was necessarily adjudged invalid if it did not bring all within its scope, or subject all to the same burdens. It would strip the Legislature of its inherent power to determine generally what is for the general interests, which interests may often be promoted by certain regulations affecting one class which do not affect another—certain burdens imposed on one which do not rest upon another."

Connolly v. Union Sewer-Pipe Co., 184 U. S., 540, held that the anti-trust law of Illinois was invalid by reason of the exemption of agricultural productions or live-stock while in the hands of the producer or raiser. The same rule in reference to taxation mentioned in *Cotting v. Kansas City Stock Yards, supra*, was also recognized by Mr. Justice Harlan in this case. Said he, p. 562:

> "The power to tax persons and property is an incident of sovereignty, and the extent to which it may be exerted has been indicated in numerous cases. Taxing laws, it has been well said, furnish the measure of every man's duty in support of the public burdens and the means of enforcing it. A tax may be imposed only upon certain callings and trades, for when the State exerts its power to tax, it is not bound to tax all pursuits or all property that may be legitimately taxed for governmental purposes. It would be an intolerable burden if a State could not tax any property or calling unless, at the same time it taxed all property or all callings. Its discretion in such matters is very great, and should be exercised solely with reference to the general welfare as involved in the necessity of taxation for the support of the State."

The *Connolly case* and the *Stock Yards case* are cited by Mr. Justice Brown, in delivering the opinion of this Court in *Cook v. Marshall County*, 196 U. S., 261. On p. 274 he said:

> "These cases, however, have but limited application to laws imposing taxes, where the right of classification is held to permit of discrimination between different trades and callings when not obviously exercised in a spirit of prejudice or favoritism. * * * It can scarcely be doubted that, if the *Connolly case* had dealt with the subject of taxation, a discriminative tax upon producers of agricultural products, either greater or less than that imposed upon other manufacturers or producers, might have been held valid without denying to either party the equal protection of the laws."

Indicating the extent to which classification by legislative enactment for the purposes of taxation will be upheld by this Court, the cases of *Cargill Co. v. Minn.*, 180 U. S., 452, and *Savannah, Thunderbolt, etc., R. R. Co. v. Savannah*, 198 U. S., 392, are noted. In the former case the defendant company insisted that the requirement of a license from the owners of elevators and warehouses situated on the right-of-way of the railway at one of its stations or sidings other than a terminal point, without requiring a license in respect to elevators and warehouses differently situated, was a denial of the equal protection of the laws. This Court, however, said, at p. 469:

> "We adjudge that as the statute applies to all of the class defined in its first section, it is not invalid by reason of its non-application to those who own or operate elevators *not* (italics in opinion) situated on the right-of-way of a railroad."

In the latter case the plaintiff contended that a classification which distinguished between an ordinary street railway and a steam railroad making an extra charge for local deliveries of freight brought over its road from outside the city, was contrary to the Fourteenth Amendment and void. This Court, however, did not yield to the contention, Mr. Justice Holmes saying, pp. 397, 398:

> "We see no ground on which we should criticise or refuse to be bound by the local adjudication. The difference between the two railroads is obvious, and warrants the diversity in the mode of taxation."

In *Kidd v. Alabama,* 188 U. S., 730, it is said:

> "We need not repeat the commonplaces as to the large latitude allowed to the States for classification upon any reasonable basis. * * * What is reasonable is a question of practical details, into which fiction cannot enter."

But assuming that uniformity and equality are applicable to a license tax, the act in question is valid for the reason that the tax is levied upon every packing-house doing business in the State, which is broad enough to include *ex vi termini* both domestic and foreign meat packing-houses. Certainly the principle of uniformity and of "the equal protection of the laws" secured by the Fourteenth Amendment are not violated so long as the tax rests alike upon all persons or corporations belonging to the particular class as classified by legislative enactment.

> *Gulf, Col. and Santa Fe Ry. v. Ellis,* 165 U. S., 150, and cases cited, p. 155.

The record states that at the various points in North Carolina where the plaintiff in error does business, certain persons sell, both by wholesale and retail, packing-house products, and it is insisted that there is a denial of the equal protection of the laws to the plaintiff, inasmuch as it is amenable, and they are not, to the tax levied by the statute in question. It will be noted, however, that these parties who sell packing-house products by wholesale and retail are not doing, either in North Carolina or elsewhere, a packing-house business, and are therefore not embraced within the terms of the statute.

The record also states that in North Carolina at all points where the Armour Packing Company is engaged in business, and at various other places in said State, there are engaged in business as the Armour Packing Company is engaged, packing-houses which pack articles of food *other than meat,* such as peas, beans, pumpkins, etc., and offer them for sale in said State. To hold that a statute is void as denying the equal protection of the laws to meat packing-houses because pumpkin packing-houses are not amenable to the same tax, one would certainly have to enter the realm of fiction.

This point, however, is covered by the language of Mr. Justice Brown in *Cook v. Marshall, supra,* p. 275:

> "From time out of mind it has been the custom of Congress to impose a special license tax upon wholesale dealers different from that imposed upon retail dealers. A like distinction is observed between brewers and rectifiers, wholesale and retail dealers in leaf tobacco and liquors, manufacturers of tobacco and manufacturers of cigars, as well as peddlers of tobacco. It may be difficult to distinguish these several classes in principle, but the power of Congress to make this discrimination has not, we believe, been questioned."

THE ARMOUR PACKING COMPANY IS DOING A MEAT PACKING-HOUSE BUSINESS IN NORTH CAROLINA.

Upon this point the Supreme Court of North Carolina said:

> "The tax is laid upon every meat packing-house 'doing business in this State.' The evident meaning of the Legislature is to tax the agency 'doing business within this State.' * * * The appellant contends that a packing-house cannot be considered as doing business in this State unless it actually engages, at some point in this State, in the business of maintaining a place where the slaughtering of animals and the dressing and preparing of the products of their carcasses for food and other commercial purpose is carried on. The record shows that the appellant ships its food products into this State in carload lots, and

> deposits them in warehouses or cold-storage plants, where they remain until disposed of in due course of business on orders taken after the goods have thus become intermingled with property in this State. The company also maintains at various points in North Carolina, in addition to its warehouses and cold-storage plants, offices and sales-places and agencies where it has in its employment book-keepers, stenographers, shipping clerks, salesmen, drivers, laborers who box said meat and who wrap and crate goods for delivery as they are sold."

The Armour Packing Company is exercising in North Carolina some of the functions for which the corporation was created, and is therefore doing a packing-house business in North Carolina.

Upon this point we quote the language of the Supreme Court of Georgia in *Stewart v. Kehrer*, 115 Ga., 184, 188:

> "The allegation that the firm does not carry on a packing-house business at Atlanta or elsewhere in this State is deprived of its force by the definition which the petition gives of a packing-house and the allegation in reference to the kind of business which Nelson Morris & Co. carry on in the city of Atlanta. It is a matter of common knowledge that a part of the business of a packing-house consists in the sale of the products which it prepares for this purpose. The petition states that these products are prepared for 'commercial purposes'; and the consummation of such purposes by the sale of the prepared products is as much a part of the business of the packing-house as is the preparation of the products. It would be sticking in the bark to hold that a firm is doing a packing-house business when it is engaged in 'slaughtering animals and dressing and preparing the products of their carcasses for food and other commercial purposes,' but is not carrying on a packing-house business when it is selling 'fresh, cured and salt meats' and other 'products' that it has 'manufactured from the carcasses of slaughtered animals' for this purpose."

We conclude this brief with the following quotation from the opinion of this Court, written by Mr. Chief Justice Fuller, in the case of *Lambert v. Barrett*, 157 U. S., 698, 699.

> "With the disposition of State questions by the appropriate State authorities it is not the province of this Court to interfere, and there is no basis for the suggestion of any violation of the Constitution of the United States; the denial of due process of law; or deprivation of any right, privilege, or immunity secured by the Constitution or laws of the United States."

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